

EFFECTIVE DATE
OCTOBER 3, 2004

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

179 NAC 10

TITLE 179 – PUBLIC WATER SYSTEMS

CHAPTER 10 - OPERATOR CERTIFICATION

10-001 SCOPE AND AUTHORITY. These regulations govern certification of water operators. The authority is found in Neb. Rev. Stat. §§71-5301 to 71-5313, and 71-162 to 71-162.05.

10-002 DEFINITIONS

Available means that based on system size, number of persons served, system classification, treatment technique and purpose, distribution complexity, and source of water, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner.

Certified operator means a person who holds a certificate of competency issued by the Department.

Department means the Department of Health and Human Services Regulation and Licensure.

Operating Shift means that period of time during which operator decisions that affect public health are necessary for proper operation of the system.

Operator in responsible charge means the person(s) designated by the owner to be the certified operator(s) who makes decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system, that will directly impact the quality and/or quantity of drinking water.

Probation means a disciplinary action not to exceed two years in length during which a certificate holder may continue to operate under terms and conditions fixed by the order of probation.

10-003 CERTIFIED OPERATOR REQUIRED: A public water system must have a certified operator. The Department will issue a permit only to a public water system that has an operator holding a certificate of competency equal to or greater than the level of classification of the water system.

10-003.01 The owner of a community or a non-transient non-community water system must place the direct supervision of their water system under the responsible charge of an operator(s) holding a valid certification equal to or greater than the classification of the water system.

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10-003.02 All operating personnel for community or non-transient non-community water systems that make process control or system integrity decisions about water quality or quantity that affect public health are required to hold a certificate of at least Grade IV.

10-003.03 For community and non-transient non-community water systems, a designated certified operator must be available for each operating shift and must hold a certificate of at least Grade IV.

10-003.04 Two or more public water systems may share or utilize the services of a single certified operator provided that the conditions in 179 NAC 10-003.04, items 1 to 4 are met. The Department will approve or disapprove each application for a shared operator (Attachment 1 which is incorporated herein by reference) based on the following conditions:

1. The shared operator must hold a certificate equal to or greater than the highest classification of the systems involved.
2. The systems are located so as to permit reasonable travel time between work areas with sufficient time remaining to perform necessary routine supervisory maintenance and operational activity for each system. As a guide, 40 miles is considered to be an acceptable distance.
3. Each system involved must develop a written plan to coordinate the activities required of the shared operator which must include a local person or persons for contact.
4. Companies or corporations established for the purpose of providing operational service to owners of public water systems must employ one or more persons holding a certificate appropriate to the highest classification of the systems served.

10-003.05 The applicant for a certificate of competency may construct an application or obtain an application form from the Department. The application must include:

1. Name, address, and telephone number;
2. Social Security Number;
3. Employer name, address and telephone number;
4. County in which the water system is located;
5. Whether or not the individual has a high school diploma or the equivalent;
6. The number of years of college the applicant has completed or other applicable post-high school education;
7. The number of months of water system operation experience the applicant has, including a description of experience as an operator in responsible charge, a provider of technical assistance to public water systems, or a regulatory agent of public water systems;
8. Any conviction of a felony;

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9. The name of the applicant's supervisor;
10. The current certification grade held, number, and expiration if applicable; and
11. The grade of certification that is requested; and
12. Any disciplinary action taken by the Director against a water operator certificate of competency held by the applicant.

10-004 CLASSIFICATION OF SYSTEMS: Public water systems are classified as follows. If a system meets the qualifications for more than one classification, the highest classification applies.

1. Class I - All community water systems and non-transient, non-community water systems
 - a. That use any treatment technology involving filtration to remove harmful materials from the raw water source or to improve the aesthetic quality of delivered water, and which serve a population in excess of 15,000 persons; and
 - b. All other community and non-transient non-community water systems that have a distribution system and that serve a population in excess of 50,000 persons.
2. Class II - All community water systems and non-transient, non-community water systems
 - a. That use any treatment technology involving filtration to remove harmful materials from the raw water source or to improve the aesthetic quality of the delivered water, and which serve between 2,000 and 15,000 persons; and
 - b. All other community and non-transient non-community water systems that have a distribution system and that serve a population between 15,000 and 50,000.
3. Class III - All community water systems and non-transient, non-community water systems
 - a. That use any treatment technology involving filtration to remove harmful materials from the raw water source or to improve the aesthetic quality of the delivered water, and which serve fewer than 2,000 persons; and
 - b. All other community and non-transient non-community water systems that have a distribution system and that serve between 2,000 and 15,000 persons; and
 - c. All community water systems which purchase water from one or more systems for the purpose of supplementing or providing service to more than 15,000 persons.
4. Class IV - All community water systems and non-transient, non-community water systems

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- a. That do not use a treatment technology involving filtration and which serve fewer than 2,000 persons; and
 - b. All other community water systems which purchase water from one or more systems for the purpose of supplementing or providing service to fewer than 15,000 persons.
5. Class V - All other public water systems (transient, non-community systems).

10-005 WATER OPERATOR CERTIFICATION GENERAL REQUIREMENTS: Persons applying for certificates of competency must meet the following requirements:

1. In adequate physical condition;
2. Able to read and write the English language;
3. Produces evidence of satisfactory attendance at operators training meetings or short courses, or completion of education courses available that are consistent with the grade applied for;
4. Able to maintain logs and records of operation and perform maintenance consistent with the grade applied for;
5. Produces evidence of good moral character, integrity, ability to cooperate with others, industry, reliability, initiative, and judgement to the degree necessary to secure satisfactory operating results; and
6. Compliance with the requirements of 179 NAC 10-006 in regard to the appropriate grade with the exception that the Department may issue a provisional certificate of competency to any applicant for a Grade I, II, III, or IV certificate for that period in which experience is being acquired. A provisional certificate of competency is non-renewable, must be issued on a case-by-case basis, and must be site specific. All education, training substitutions, and experience requirements must be met during the provisional period.

10-006 GRADES OF CERTIFICATION: The Department offers six grades of certification: five grades to public water system operators, and one grade of certification to public water system authorized backflow preventer testing and repair technicians, in accordance with the criteria described in 179 NAC 10-006. Any individual who tests or repairs backflow prevention devices with test ports, installed to protect a public water system from real or potential contamination or pollution, is required to hold a Grade VI certificate.

10-006.01 The Department will accept the following substitutions or equivalents for required experience or training for Grades I, II, III and IV water operators.

1. The Department, with the advice of the Council, may accept a substitution for required experience or training when deemed equivalent to the requirements of 179 NAC 10-006 and when the applicant for certification requests substitution and submits documentation of appropriate education or experience. Experience that is used to meet the experience requirement for any grade of certification may not be used to meet the education. Education that is used to meet the education requirement for any grade of certification may not be substituted for experience.

10-006.02 Education and Experience Required: All applicants for certificate of competency must meet the following education and experience requirements prior to examination for the appropriate grade requested.

1. Grade I Certification –
 - a. Prior successful completion of a Grade II certification examination and successful completion of a validated examination on the subject of operation of a public water system recommended by the Advisory Council on Public Water Supply and approved by the Director; and
 - b. A degree of Bachelor of Science (with special courses in sanitary sciences) and three years in responsible charge or operation of a public water system or three years as a regulatory agent of public water systems (e.g., State or Federal Safe Drinking Water Act enforcement experience); or three years as a provider of technical assistance to public water systems; or
 - c. Four years of college and four years of responsible charge of a public water system or four years as a certified operator of a public water system; or four years as a regulatory agent of public water systems (e.g., State or Federal Safe Drinking Water Act enforcement experience); or four years as a provider of technical assistance to public water systems; or
 - d. High school diploma or equivalent and six years responsible charge of a Class II or III public water system or eight years operation of a system under the supervision of a person possessing certificate of competency as a Grade I Operator or eight years as a certified operator of a public water system or eight years as a regulatory agent of public water systems (e.g., State or Federal Safe Drinking Water Act enforcement experience); or eight years as a provider of technical assistance to public water systems.
2. Grade II Certification -
 - a. Prior successful completion of a Grade III certification examination and successful completion of a validated examination recommended by the

Advisory Council on Public Water Supply and approved by the Director;
and

- b. Two years of college, plus three years responsible charge of a public water system or three years as a certified operator of a public water system; or three years as a regulatory agent of public water systems (e.g., State or Federal Safe Drinking Water Act enforcement experience); or three years as a provider of technical assistance to public water systems; or
- c. High school diploma or equivalent and six years responsible charge of a Class III public water system or six years operation of a system under the supervision of a person possessing a certificate of competency as a Grade I or Grade II operator or six years as a regulatory agent of public water systems (e.g., State or Federal Safe Drinking Water Act enforcement experience) or six years as a provider of technical assistance to public water systems, or six years as a certified operator of a public water system.

3. Grade III Certification -

- a. Successful completion of a validated examination recommended by the Advisory Council on Public Water Supply and approved by the Director;
and
- b. High school diploma or equivalent and two years responsible charge of a community water system; or
- c. High school diploma or equivalent, and three years operation of a system under the supervision of a person possessing a certificate of competency as a Grade I, Grade II, or Grade III operator of a public water system; or four years as a regulatory agent of public water systems (e.g., State or Federal Safe Drinking Water Act enforcement experience); or four years as a provider of technical assistance to public water systems, or four years as a certified operator of a public water system.

4. Grade IV Certification -

- a. High school diploma or equivalent and
- b. Successful completion of a validated examination following
 - (1) Six months experience as a water operator or
 - (2) A basic training course for water system operators recommended by the Council and approved by the Director; or

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- (3) A correspondence course recommended by the Council and approved by the Director.
- 5. Grade V Certification –
 - a. Demonstrated ability in the collection of water samples, interpretation of results of biological examination and the maintenance of required records.
- 6. Grade VI Certification -
 - a. A minimum 32 hour course which includes hands-on instruction, and successful completion of an examination recommended by the Council and approved by the Director on the subject of cross connections, backflow preventer operation, maintenance, testing, and repair. Such examination must include a written test as well as a hands-on portion to test actual testing and repair proficiency.

10-007 ISSUANCE AND RENEWAL OF CERTIFICATES OF COMPETENCY

10-007.01 The Department will issue certificates of competency for operators of public water systems or any part of such systems for the calendar years applied for and will expire at midnight on December 31, of the third full year. The Department will notify each certificate holder at least ninety days before the expiration of the certificate by a letter addressed to him/her at his/her last place of residence as noted upon its records.

10-007.02 The Department may deny, suspend, revoke, or refuse renewal of any such certificate for due cause. The holder of a certificate of competency may also be placed on probation by the Director for due cause. Due cause will include, but not be limited to:

- 1. Fraud in processing the certificate;
- 2. Habitual intoxication or addiction to the use of drugs;
- 3. Conviction of a felony;
- 4. Physical or mental incapacity to perform professional duties;
- 5. Violation of any of the provisions of the Nebraska Safe Drinking Water Act or any rules or regulations adopted under such act;
- 6. Failure to pay the required fee; and
- 7. Falsification or misrepresentation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with these regulations.

10-007.03 Revocation: If a certificate holder is placed on probation, his/her certificate may be revoked if the probationary requirements are not followed.

10-007.04 The Department will provide due notice and an opportunity for a hearing before denying, suspending, or revoking any certificate or placement of a certificate holder on probation except in cases where the certificate holder has failed to pay the required fees. Any denial, suspension, or revocation of such license is subject to review pursuant to the provisions of the Administrative Procedure Act.

10-007.05 Those persons who hold certificates of competency may renew their certificates triennially upon submission of information updating that contained in the original application and upon the submission of evidence that the applicant for renewed certification has received at least fifteen hours of acceptable continuing education, consistent with the certification grade held, during the past three year period.

10-007.06 A certificate, when expired, is no longer valid. An individual without a valid certificate is no longer certified.

10-007.07 Holders of Grade V certification are exempt from the continuing education and renewal requirements.

10-008 FEES: The Department has set the following fees:

10-008.01 Initial Certificate Fee

1. Beginning July 1, 2004, each applicant must submit a fee of \$91 and the Licensee Assistance Program fee of \$3 except that a Grade V operator must submit a fee of \$30 plus a Licensee Assistance Program fee of \$1.
2. Through June 30, 2004, each applicant must submit a fee of \$10 with each application for a Certificate of Competency and with each application for renewal of a Certificate of Competency.

10-008.02 Correspondence Course Fee: Each applicant must submit a fee of \$80 with each application for a correspondence course conducted by the Department.

10-008.03 Training Course Fee: Each applicant must submit a fee \$40 for each day of a scheduled basic training course delivered by the Department with each application for enrollment in a course that terminates with a written examination qualifying the attendee to apply for a certificate of competency.

10-008.04 Other Fees: Each applicant must submit a fee of \$50 with each request for individual examination without attendance at a scheduled basic training course delivered by or approved by the Department except that there is no charge for the Grade V examination.

10-008.05 Renewal Fee: Beginning July 1, 2004, a certified water operator may renew for the fee of \$91 plus the Licensee Assistance Program fee of \$3. Through June 30, 2004, a certified water operator may renew for the fee of \$10.

10-008.06 Late Fee: Beginning July 1, 2004, a certified water operator who fails to pay the renewal fee on or before the expiration date of the certificate may renew within 30 days after the date of expiration by paying a \$25 late fee in addition to the renewal fee.

10-008.07 Certification of Certificate Fee: Beginning July 1, 2004, the Department will charge a fee of \$25 for issuance of a certification of a water operator certificate. The certification includes information regarding:

1. The basis on which a certificate was issued;
2. The date of issuance;
3. Whether disciplinary action has been taken against the certificate; and
4. The current status of the certificate.

10-008.08 Verification of Certificate Fee: Beginning July 1, 2004, the Department will charge a fee of \$5 to issue a verification of a certificate. The verification includes written confirmation stating whether or not a certificate was valid at the time the verification was made.

10-008.09 Duplicate Certificate Fee: Beginning July 1, 2004, the Department will charge a fee of \$10 for a duplicate of an original or reissued certificate.

10-008.10 Administrative Fee: Beginning July 1, 2004, the Department will retain an administrative fee of \$25 for a denied certificate or a withdrawn application.

10-009 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person has made process control or system integrity decisions about water quality or quantity that affect public health for community or non-transient non-community water systems without holding a certificate of at least Grade IV. Making process control or system integrity decisions without a certificate for the purpose of 179 NAC 10 means making process control or system integrity decisions:

1. Prior to the issuance of a certificate;
2. Following the expiration of a certificate; or
3. Prior to the reinstatement of a certificate.

10-009.01 Evidence of Making Process Control Or System Integrity Decisions: The Department will consider any of the following conditions as prima facie evidence of making process control or system integrity decisions without a certificate:

1. The person admits to making process control or system integrity decisions;
2. Staffing records or other reports from the employer of the person indicate that the person made process control or system integrity decisions; and

3. Government records indicate the person made process control or system integrity decisions.

For purposes of 179 NAC 10, prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

10-009.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for making process control or system integrity decisions without a certificate. To assess such penalty the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

10-009.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.

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Application to Serve as a Certified Operator for More than One Nebraska Public Water System

The operator or water system taking on responsibilities for more than one water system is required to notify the Department by sending this form to the Department of Health and Human Services Regulation and Licensure, P.O. Box 95007, Lincoln, NE 68509-5007. When the agreement terminates, the operator or water system is also required to notify the Department.

System 1 is the system with a current certified operator.

System 2 is the system requesting to share the certified operator of System 1.

System 1

Public Water System Name _____

System Address _____

System Classification _____ System ID Number: NE-31 _____

Certified Water Operator(s) and grade(s) _____

Business phone # for operator _____ Cell phone _____

E-mail address _____ Home phone _____

System 2

Public Water System Name _____

System Address _____

System Classification _____ System ID Number: NE-31 _____

Name of contact person (for operator and Department) _____

Phone number(s) of contact person _____

Additional Information

Distance between the two systems _____

Duties to be performed by the shared operator at System 2 include:

- ___ Taking water samples
- ___ Receiving kits from the lab
- ___ Receiving results from the lab
- ___ Making public notification when required
- ___ Notifying the contact person about the need to make public notification
- ___ Maintaining records
- ___ Maintaining all correspondence from the Department
- ___ Routine maintenance of water system components
- ___ Other (please specify) _____

Sample kits for System 2 are to be sent to _____

at _____

Phone number _____

Agreement: The signatures of the parties below indicate that the shared operator will perform the duties identified on this document.

Shared Operator

Signature

Date

Printed or Typed Name

System 1

System 2

Signature

Signature

Title

Title

Printed or Typed Name

Printed or Typed Name

Date

Date